IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25-1-2002

Coram

The Honourable Mr.Justice A.S.VENKATACHALAMOORTHY

Second Appeal No.171 of 1990

1.Angammal
2.Subramaniam
3.Ramasamy ... Appellants

Vs.

1.Komara Gounder
2.Sengali Gounder
3.Periyasamy ... Respondents

For Appellants : Mr.R.Loganathan

For Respondents : No appearance

Appeal against the decree and judgment of the learned Subordinate Judge, Namakkal made in A.S.10 of 1988 confirming the decree and judgment of the learned District Munsif in O.S.503 of 1985.

: J U D G M E N T

The Second appeal is preferred against the Judgment and Decree of the learned Subordinate Judge, Namakkal in A.S.10 of 1988 confirming the Judgment and Decree of the learned District Munsif, Namakkal in O.S.503 of 1985.

2. The Plaintiff is the appellant herein. The case of the plaintiff as set out in the plaint can be stated as follows:

The suit property is an agricultural land in Survey No.299/8 in Lathuvadi village, Namakkal Taluk, Salem District with an area of 3.58 acres. The case of the plaintiff is that one Vaiyapuri Gounder, who is the husband of the first plaintiff and father of plaintiffs 2 and 3 purchased under two sale deeds viz., dated 7.11.1966 and 3.3.1969 and since then he was in possession and enjoyment of the same without any interruption till his death. After the demise of Vaiyapuri Gounder, the plaintiffs have been enjoying the said property. The defendants who have no manner of title or interest in the above said

property, at the instigation of some people who are ill-disposed of towards plaintiffs, claimed ownership to the suit property and that in fact from 16.6.1985 onwards they have been interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs. The plaintiffs also claim that even assuming defendants have any right or title, they have lost their right by non-enjoyment over the statutory period. The plaintiffs sought for declaration that they are entitled to the suit property and for consequential permanent injunction.

3. The first defendant filed a written statement adopted by defendants 2 and 3 contending that defendants retaining for themselves 10 cents of land sold only the balance to Vaiyapuri Gounder in the said survey number 299/8 and actually the sister of the defendants was in possession of that property (10 cents) and residing therein. After her death, it is the defendants who have been in possession and enjoyment of the said 10 cents of land. The further case set out in the written statement is that in fact in respect of that 10 cents of land, they have entered into an agreement to sell to one Palanisamy, son of Chinnusamy Goundar for a total consideration of Rs.9,000/- and in fact received an advance of Rs.3,500/-. It is also contended by the defendants that since they refused to sell the property viz., 10 cents of land at a cheaper rate to the plaintiffs, they have filed the suit only to harass them.

4. The learned District Munsif after elaborately considering the oral and documentary evidence, came to the conclusion that the plaintiffs have not come to the Court with clean hands and since dispute between the parties was only with reference to 10 cents of land and that further plaintiffs have not proved their title to the disputed 10 cents of lands. Ultimately the learned District Munsif dismissed the entire suit.

5. On appeal the appellate Court also confirmed the Judgment and Decree of the trial Court.

6. At the time of admission, this Court formed following two substantial questions of law for consideration.

"(1) Whether the lower appellate Court was right in the view it took that the appellants have not prescribed title to the property of an extent of 10 cents; and
(2) Whether the courts below were right in dismissing the suit in toto when the respondents have accepted the right of the appellants to the entire extent of the land,excepting 10 cents ?"

7. The plaint schedule property is to an extent of 3.58 acres of land in the village Lathuvadi in Namakkal Taluk in Salem District. While it is the case of the appellants/ plaintiffs

that they are entitled for the entire property and that even assuming defendants had any right in any part of this property, the plaintiffs have perfected their title by adverse possession. On the other hand, the case of the respondents/ defendants is that they sold the property retaining 10 cents of land in that survey number to Vaiyapuri, who in turn sold to the 1st plaintiff's husband and that they are not claiming anything in the remaining land (i.e.,) 3.48 acres. Similarly while it is the case of the appellants/ plaintiffs that respondents/defendants are interfering with their enjoyment, respondents/ defendants would contend that they did not do so and propose to do so in future as well.

8. From the pleadings as well as the evidence adduced before the Court it is fairly clear that the appellants/ plaintiffs are entitled for 3.48 acres. Now the question is as to whether the suit has to be dismissed in its entirety because appellants/ plaintiffs filed a suit claiming declaration and enjoyment for the entire extent of 3.58 acres in survey No.299/8. To put it differently, when the respondents/ defendants themselves admit before the Court the title of the appellants/plaintiffs for an extent of 3.48 acres, can the Court refuse to declare that on the ground that the appellants/plaintiffs have not come forward before the Court with the claim for a larger area.

9. Way back in the year 1867, in PITAMBAR v. RAM JOY, (1867) SOUTH W.R.93, the Courts have held that where plaintiff claims more than what he is entitled to, the Court will not dismiss the suit but give the plaintiff only such relief as he is entitled to. This view was later on affirmed in LAKSHMAN v. HARI, I.L.R. 4 BOMBAY 584; VENKATARAMANA v. Verabalu, A.I.R. 1940 MADRAS 308; KHAMTA MANDALASSI v. HEM KUMARI, A.I.R. 1941 PATNA 29; BHIKU v. PUTTU, (1905) 8 BOMBAY L.R. 106 (D.B.). This Court is inclined to point out certain rulings of the Supreme Court at this juncture which will further clarify the legal position. (a) While dealing with the power of the Court to grant smaller relief in a writ petition, the Supreme Court in B.R.Ramabhadriah v. Secy., F.& A. Deptt., A.P. (A.I.R. 1981 S.C. 1653), observed thus, "5. It is true that the writ petition contained a prayer for the quashing of the gradation list in sofar as it related to the inter se ranking of the petitioner vis-a-vis respondent Nos.3 to 8 and the petitioner (appellant) had also sought the issuance of a writ of mandamus directing respondents Nos.1 and 2 to forbear from implementing or acting upon the said gradation list. But, subsequent to the institution of the writ petition, the Central Government had re-fixed the ranks of respondents Nos.1, 4, 5, 7 and 8 (Telengana Officers) and placed them below the appellant thereby redressing the grievance of the appellant in sofar as it pertained to the ranking of the aforesaid respondents. It therefore became

unnecessary for the appellant to pursue his claim for relief with respect to the ranks assigned to those five respondents. It was under those circumstances, that the appellant submitted before the learned single Judge of the High Court, at the time of final hearing of the writ petition, that he was pressing the writ petition only in so far as it related to his claim for seniority over the 6th respondent. We fail to see how the fact that the appellant had sought in the writ petition the issuance of a writ of mandamus directing respondents 1 and 2 to forbear from implementing or acting upon the provisional gradation list will operate to preclude him from seeking a lesser relief, namely, the quashing of the list only in so far as it pertains to the fixation of the inter se seniority between himself and the 6th respondent. The material facts and circumstances had undergone a substantial change subsequent to the filing of the original petition and it was in consequence thereof that it had become unnecessary for the petitioner to pursue his original prayer for the grant of a larger relief. Besides ignoring this crucial aspect, the Division Bench of the High Court has also lost sight of the well established principle that in an action where a party has prayed for a larger relief it is always open to the court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changes circumstances and suitably hold the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds. We do not, therefore, find it possible to uphold the view expressed by the Division Bench of the High Court that since the writ petition was not pressed in sofar as it related to the officers belonging to the Telengana region the question of inter se seniority between the writ petitioner and the 8th respondent should not have been considered by the single Judge and the writ petition should have seen dismissed. 6. Accordingly, we set aside the judgment of the Division Bench and remand the writ appeal to the High Court for fresh disposal in accordance with law. The parties will bear the irrespective costs in this appeal." (emphasis supplied)

(b) In the decision in Hindalco Industries Ltd. v. Union of India (1 994 (2) SCC 594), while considering the scope of Order 7 Rule 7 of Civil Procedure Code, the Supreme Court held as under, "6. It is seen that the appellant sought for declaratory relief that the rates being charged are 'wholly unjust and unreasonable' and for a direction to the railways to charge 'reasonable rates' on the basis of actual distance of 568 km together with other consequential relief. It is to be remembered that the relief otherwise cognisable by Civil Court of competent jurisdiction under Section 9 of the CPC has been,

statutorily conferred on the Tribunal with powers of a Civil Court to decide the claims under the Act. Order 7, Rule 7, CPC provides that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may 'think just' to the same extent as if it had been asked for, and the same rule shall apply to any relief claimed by the defendant in his written statement. Order 2, Rule 2 enjoins to claim the relief in respect of a cause of action and under clause 3 of Order 2, Rule 2, if he omits to seek the relief, except with the leave of the court, he shall be precluded thereafter for any relief so omitted."
(emphasis supplied)

In fact as Odgers would put it, where a party cannot be exact, it is wiser to claim too much rather than too little as a Judge does not give more than that which the plaintiff requires û Judex non Reddi injuriam subi datam punire.

But however, the legal position is, where the plaintiff claims less than what he is entitled to, the Court will not grant him any relief he has not specifically claimed unless the plaint is amended before the judgment. It was so held way back in the year 1838 in SOORIAH ROW v. COTAGHERY, (1838) 2 M.I.A. 113 and the said view was later on confirmed in a subsequent ruling of Calcutta High Court in the case PERCIVAL v. COLLECTOR OF CHITTAGONG, (1900) I.L.R. 30 CALCUTTA 516. At the same time, the Court should not refuse to grant a relief not specifically claimed in the plaint, if such relief is obviously required by the nature of the case and is not inconsistent with the relief specifically claimed and raised by the pleadings. The Full Bench of the Lahore High Court in MEHER CHAND v. MILKHI RAM, A.I.R. 1932 LAHORE 40 1 (F.B.), held that it is the duty of the Court to mould the relief to be granted to the parties according to the facts proved which, however, should not be inconsistent with the pleadings.

Also relevant to mention in this context the ruling of the Supreme Court in KEDAR LAL v. HARILAL, A.I.R. 1952 SUPREME COURT 47 where it is held that the Court would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side however clumsily or inartistically the plaint may be worded and that in any event, it is always open to a Court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs.

10. In the light of the settled legal position, this Court has no hesitation to grant a decree in favour of the appellants/plaintiffs for declaration and for permanent injunction with reference to an extent of 3.48 acres comprised in Survey No.299/8 in Lathuvadi village in Namakkal Taluk in Salem District. A.S.VENKATACHALAMOORTHY,J.

11. The second appeal is allowed in part to the extent indicated above.

Index: Yes/No. 25-1-2002
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To
1.The District Munsif, Namakkal
2.The Subordinate Judge, Namakkal

Pre-Delivery Judgment in
S.A.No.171 of 1990